

*State of Michigan
In the Supreme Court*

Appeal from the Michigan Court of Appeals
Donofrio, P.J., and Cavanagh and Stephens, J.J.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CHANDRA VALENCIA SMITH-ANTHONY,

Defendant-Appellee.

Supreme Court
Docket No. 145371

Court of Appeals No. 300480
Oakland Circuit Court No. 2010-232465-FH

Reply Brief—Appellant

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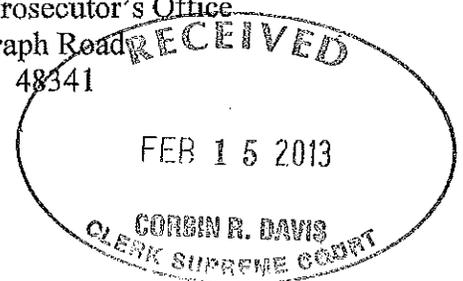


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ARGUMENT

I. The Court of Appeals' interpretation of the phrase "from the person" in the larceny from a person statute, MCL 750.357, unduly narrowed the well-established common-law definition of the phrase. This Court should reinstate the common-law definition that controlled before the Court of Appeals' novel interpretation. Applying the proper definition of "from the person," the evidence was sufficient to prove that defendant stole the merchandise from the observing loss prevention officer's area of protection and control.

Contrary to defendant's argument, the people are not asking this Court to expand the definition of "from the person" or "presence" as it relates to the larceny from a person statute, MCL 750.357. Rather, the people are asking this Court only to preserve the definition of these terms that was well-established at common-law before the Court of Appeals improperly narrowed that definition in a published opinion. In *People v Covelesky*, 217 Mich 90, 97; 185 NW 770 (1921), this Court held that a taking of property is "from the person" if it is in his presence, meaning under his personal protection and control. This Court reaffirmed this interpretation of the phrase "from the person" in *People v Gould*, 384 Mich 71, 79-80; 179 NW2d 617 (1970). More recently in *People v Perkins*, 262 Mich App 267, 272; 686 NW2d 237 (2005), aff'd 473 Mich 626; 703 NW2d 448 (2005), the Court of Appeals held that MCL 750.357 requires that "the property was taken from the person or from the person's immediate area of control or immediate presence." In the instant case, the Court of Appeals narrowed the established common-law meaning of "from the person" or "presence" by holding that the evidence was insufficient to prove that element without evidence that defendant was within the victim's "personal space" or arm's length. Before this decision, neither this Court nor the Court of Appeals had ever limited the area of a person's "presence" in this manner. In fact, this Court has held in the past that a taking may be in a person's presence even if he is in another room. *Covelesky*, *supra* at 99; *Gould*, *supra* at 79; see also *People v Cabassa*, 249 Mich 543, 547; 229

NW2d 442 (1930). The people are requesting only that this Court reject the Court of Appeals' novel and unduly restrictive interpretation of "from the person" or "presence" and return to the well-established common-law definition that existed before this case.

The people do not, as defendant contends, suggest that the "from the person" or "presence" element of larceny from a person is satisfied by evidence that the victim was within "an undetermined visual range" of the property when the defendant took it (Defendant's Brief, 11-14). Rather, the people argue that this element may be satisfied by evidence that the property was under the victim's protection and control. *Covelesky, supra* at 97-99. Whether the larceny of the property occurred while the victim was observing is but one factor in determining whether the property was under his protection and control. As the Court of Appeals stated in *People v Beebe*, 70 Mich App 154, 159; 245 NW2d 547 (1976), a thing is in the presence of a person if it is "so within his reach, inspection, *observation* or control" that he could retain possession of it. *Id.* (emphasis added). It will doubtless often be the case that property under a person's observation is within his area of protection and control (i.e., he could retain possession of it). But observation or "visual range" is not the dispositive factor in determining "presence." Regardless whether the victim was observing the property when the defendant took it, the prosecution must still prove that the property was within his area of protection and control. For example, if a thief steals a bicycle while the bicycle owner is watching from the window of his fifth floor apartment, the bicycle is not within the owner's "presence" (it was not within his control, nor could he have retained possession of it) even though it is within his "visual range" and under his observation. But if the bicycle owner were observing the theft from the sidewalk where he had control over the bicycle, then a jury could find that the larceny was in his presence for purposes of larceny from a person.

This Court should reject defendant's argument that the evidence was insufficient to prove the "from the person" or "presence" element because there was no testimony specifying the exact distance between Krumbhaar and defendant at the time of the larceny. Nothing in MCL 750.357 or the cases interpreting it require that the defendant be within a specific number of feet of the victim when committing the larceny. Rather, this Court has kept the common-law definition of "presence" flexible to account for different situations. In fact, in *Covelesky, supra* at 98, this Court held that the proximity required between the defendant and the victim is not easily defined: "The personal protection is interpreted to cover all one's effects within a not easily defined distance over which his presence may be deemed to have sway." *Id.*, quoting 2 Bishop's New Crim Law, §§1177-1178. The Court of Appeals majority in this case incorrectly held that the evidence was insufficient to prove the "presence" element because it showed only a "vague proximity" between defendant and loss prevention officer Khai Krumbhaar (93a). In fact, Krumbhaar testified that she was close enough to defendant to see her conceal the merchandise, to see that she was nervous, to see she did not pay, to hear what she was saying to sales associates, and to stop her as she walked out of the store (23a-29a).¹ Although Krumbhaar did not testify regarding her exact distance from defendant or specifically testify that she was close enough to defendant to retain possession of the White Diamonds box, "reasonable inferences may be sufficient to prove the elements of a crime." *People v Tanner*, 469 Mich 437, 444 n 6; 671 NW2d 728 (2003). Krumbhaar's testimony was sufficient for the jury to infer that defendant took the White Diamonds box from her area of control. *Gould, supra* at 80; *Perkins, supra* at 272. "It is for the trier of fact, not the appellate court, to determine what inferences may

¹ The people disagree with the assertion in defendant's brief that defendant was nearly 200 feet from the entrance of Macy's when Krumbhaar confronted her (Defendant's Brief, 8). In fact, Krumbhaar testified that after she seized

be fairly drawn from the evidence and to determine the weight to be accorded those inferences.”
People v Hardiman, 466 Mich 417, 428; 646 NW2d 158 (2002). For these reasons and the reasons stated in the people’s brief on appeal, this Court should reverse the Court of Appeals opinion and reinstate defendant’s larceny from a person conviction.

RELIEF

WHEREFORE, Jessica R. Cooper, Prosecuting Attorney in and for the County of Oakland, by Matthew A. Fillmore, Assistant Prosecuting Attorney, respectfully requests that this Honorable Court reverse the Court of Appeals judgment and reinstate defendant’s larceny from a person conviction.

Respectfully Submitted,

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defendant’s arm outside of Macy’s, defendant was able to drag her 200 feet away from the Macy’s entrance during the ensuing struggle (31a). Krumbhaar did not say how far she was from the entrance when the confrontation began.